IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION Nos 8055, 8056
and 8104 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MUKESHKUMAR BABULAL SHAH

Versus

COLLECTOR

Appearance:
MR SANJAY M AMIN for Petitioners
Ms NANDINI JOSHI, AGP for Respondent

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 16/08/2001

COMMON ORAL JUDGEMENT

Rule. Ms Nandini Joshi, learned AGP waives service of Rule for the respondent.

2. Each of the petitioners, three in number, was granted on whole sale dealer's licence to deal in kerosene under the Gujarat Essential Articles (Licensing,

Control and Stock Declaration) Order, 1981. Upon expiry of the term of their respective licenses, the petitioners applied for renewal of the licence. However, the renewal applications of the respective petitioners were rejected on the ground that the State Government had issued circulars that the wholesellers' licence in kerosene be renewed only in case of those persons who were appointed as agents by the concerned oil Companies. In this view of the matter, the Collector did not renew the licences, but no formal orders were passed for rejecting the applications for renewal. It also appears that a large number of other similarly situated wholesale dealers in kerosene who were not granted renewal of the licence to deal in kerosene as wholesalers had approached this Court. The learned Single Judge of this Court dismissed those petitions challenging those decisions. The Letters Patent Appeals were filed and by judgment dated 2.8.2001 in Letters Patent Appeal No. 538 of 2001 and cognate appeals, the Division Bench of this Court has held that merely on the strength of the executive instructions the State Government has no power to direct the licensing authorities not to renew the wholesalers' licences except in the case of agents appointed by the concerned oil Companies.

3. In view of the aforesaid judgment of the Letters Paten Bench, it is obvious that the petitioners are entitled to get a writ of mandamus directing the respondent/licensing authority to consider the petitioners' applications for renewal of the wholesale dealer's licence in kerosene even if the petitioners are not appointed as agents by the concerned oil Company.

As regards the petitioners' prayer that they should also be appointed as commission agents for kerosene, the said prayer is misconceived in so far as the commission agents are not being appointed by the Collector or any State Government authority, but they are being appointed by the concerned oil Companies. The concerned oil Company is not joined as a party in this petition. Accordingly, it will be open to the petitioners to apply before the concerned oil Company for appointing the petitioners as commission agents. However, in view of the aforesaid judgment dated 2.8.2001 in Letters Patent Appeal No. 538 of 2001 it is directed that the grant or non-grant of such commission agency by the concerned oil Company shall not prevent the licensing authority under the Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order, 1981 from considering the petitioners' application for renewal of the licence as wholesalers. The applications shall be

considered and decided by the licensing authority within three months from the date of receipt of the writ of this Court or a certified copy of this judgment, whichever is earlier.

5. Mr Sanjay Amin for the petitioners states that the ad-interim relief granted earlier may be continued for some time.

6. It is obvious that since non-consideration of the petitioners' applications was on the basis of certain executive instructions which have not been upheld by the Letters Patent Bench and considering the fact that the ad-interim relief was operating in favour of the petitioners so far, it is directed that the ad-interim relief granted by this Court in favour of the petitioners shall continue till the licensing authority decides the petitioners' applications for renewal.

Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S. Shah, J.)
sundar/-